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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,052	07/24/2001	Valentin Hierzer	CCK-0057	3731

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EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/911,052	<b>Applicant(s)</b> HIERZER ET AL.	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-13 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what is intended by "positioned between". More specifically, it is unclear if applicant intends to set forth a structural/spatial relationship not inherently

It appears the phrase "tamper-evident band" is being used to describe two different structures. The tamper evident band in claim 13 sets forth a plurality of tamper evident bands of claim 1. How is it possible to have a plurality of tamper evident bands that remain attached with one of the lid and body? While it is clear the specification indicates the frangible portion comprises a plurality of tamper evident bands, the claims are confusing. The specification indicates at page 5, line 4 that the tamper evident bands **36** are defeated during initial opening. This suggests the tamper evident bands are broken. Thus, it is unclear how the at least one tamper evident band (or the plurality of tamper evident bands) remains attached to at least one of the lid and body after initial opening. The examiner suggests the language of the claims clearly indicate a portion of the band connected to one of the lid or body remains attached after the tamper evident band(s) is defeated upon initial opening of the closure.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1,3-5, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Benoit-Gonin et al. (US 6,976,607).

The tamper evident band **30** is unitary with the body portion **A** and upon closing of the lid **B** becomes mechanically integral with the lid **B**.

5. Claims 1,3-8,11-13 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Grant (US 5,662,245).

Grant teaches a tamper evident closure as set forth in the claims. Figure 14 depicts the spout **56**, figure 12 depicts the at least one tamper band (an unnumbered weakening set forth in claim 15) positioned between the body portion **60** and the lid portion **54**, and figure 13 depicts the ultrasonically attached end **66** to the closure portion. Grant does not specifically call the hinge a "snap-hinge", but does provide a living hinge which maintains the closure in an open position and states other types of known hinges are suitable for use.

With regard to claims 6-8, wherein one of the tabs **65** can be pressed against the boss **69** for reducing the tearing force, the tab **65** meets the limitations of the claims.

***Claim Rejections - 35 USC § 103***

6. Claims 1,3-8,11-13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grant.

As set forth above, Grant teaches a tamper evident hinged closure except is silent regarding a "snap-hinge".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a snap-hinge for the closure of Grant as an alternative, known hinge for securing a closure lid portion to a closure body portion. See Grant 's disclosure at column 6, lines 63-65 and column 7, lines 64-66 regarding alternative hinge structures.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grant in view of Harrold et al. (US 6,631,820).

Grant teaches a screw-on, hinged closure (figures 23 and 24) for a container. Grant is silent regarding a tamper evident band that breaks upon unscrewing the closure from the associated container.

Harrold teaches a screw-on, hinged closure having a tamper evident band **90** that breaks upon unscrewing the closure from the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a tamper evident band that breaks upon unscrewing the closure from the associated container to the closure of Grant. Doing so provides additional evident of potential tampering prior to first use.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grant.

Grant teaches the claimed closure except is silent regarding a plurality of tamper bands.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the weakening with a plurality of tamper evident bands since the

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examiner takes Official Notice of the equivalence of a single tamper evident band, plurality of tamper evident bands, and lines of weakening for their use in the art and the selection of any of these known equivalents to provide a fracturable structure would be within the level of ordinary skill in the art.

***Allowable Subject Matter***

9. Claim 9 appears to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-13 and 21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice

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may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.


Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
March 30, 2006



Robin A. Hyten  
Primary Examiner  
GAU 3727